

A New Poll-Bill

For Raising the Sum of

Seven Hundred Thousand Pound.

Humbly offered to Consideration.

By a PERSON of QUALITY.

I. **T**HAT a Civil TEST be tender'd to all Degrees of Persons, in such Manner and Form as shall be thought convenient, as for Example :

I (A. B.) Do Swear, and Solemnly Profess, in the Presence of Almighty God, That I will not take up Arms, Nor by any other Ways or Means, Directly, or Indirectly, Counsel or Assist any Person or Persons against Their Majesties King WILLIAM and Queen MARY.

So help me G O D.

All Men who refuse such a passive Innocent TEST as this, do refuse to live peaceably under the Government ; And, by Consequence, they do tacitely confess to the King and Parliament, that, as soon as they have a fair Opportunity, they will employ their Money and Strength to overturn the Government.

II. 'Tis a Maxim in Law, *Protectio trahit Subjectionem, & Subjectio Prot. Etionem*. And therefore they who renounce Subjection to any Government, do renounce Protection from the same : And, by Consequence, have no Right by Law to the protection of either Life or Estate under the present Government. For which Reasons it is both Just and Convenient to raise a Tax upon them. Just, because it is but a moderate and reasonable thing that they should pay down some small Contribution, to purchase that protection for the Residue of their Estates, which, by Law, they have no Title to ; Convenient, for that by this means we shall give Ease to our Friends, and weaken none but Enemies : And let no Man fear the Consequences, for if it be Just, it will certainly prosper.

No Man can Foretell to what Sum this Tax may amount, but 'tis worth our Tryal in small Sums, and then it may be repeated as often as there is occasion ; Suppose that the most Inferior Rank pay but 40 s. a Tradesman worth 100 l. clear, 5 l. worth 200 l. clear, 10 l. and so on, at the Rate of 5 l. per Cent. A Gentleman of any Estate 30 l. an Esquire 20 l. a Knight 10 l. a Baron 5 l. a Bishop 4 l. an Earl 3 l. a Marquess 120 l. a Duke 140 l. and so on, in proportion to their Ranks and Estates in England and Wales, which will probably consist most of Gentry and Tradesmen, and so one with another at 30 l. the same will amount to 120 Thousand l. This is but a small Number in England and Wales ; If there be more, the Tax will be more considerable and seasonable, for we shall discover our Enemies, and make good use of that Money which was intended for our Destruction ; If there be less, we shall have Men instead of Money, and be the better able to guess at our strength at home, and know what Measures to take in this great Conjunction abroad ; It is impossible that the Nation can lose any thing by such a Law, but 'tis probable they may make wonderful Discoveries, and advance a considerable Tax by it.

III. That all Fines and Forfeitures which are due by Law, and may be recovered by any Informer, shall be appropriated by Act of Parliament to the publick Use ; and that the Attorney, or Solicitor General be enabled to Sue for and Recover all such Forfeitures as any Informer might have done. This Proceeding will not be inconsistent with any Alliances abroad, since no punishment is hereby inflicted since the Revolution for Matters of Religion, but only those Forfeitures formerly due by Law taken from the common Informer, and appropriated to the publick Use ; And this will extend to all Recusants Convict (whether Papist or Dissenter) before the late King's pardon, and before the Judgment in Sir Edward Hales's Case, and may raise 100 Thousand l. For the words of the Statute are, *That in case any person neglect or refuse to take the Oaths within the time prescribed, and shall be thereupon lawfully Convicted in or upon any Information, Presentment or Indictment, every such person shall forfeit 500 l.* So that the late King's pardon does not extend to persons actually Convicted, but that the Informer hath still a good Title to an Action for the penalty of 500 l. but only to persons who were not Convicted, nor any Information Fil'd against them before the said pardon ; For as to them, the King might pardon the penalty before Information Fil'd, for since they cannot now be Convicted by Law, the Informer can never have any Title, who must, in his Declaration set forth the Conviction as part of his Title by the said Statute.

IV.

IV. That all other persons in Offices who did not take the Oaths, shall pay for their Heads (and for the Benefit of a General Act of Oblivion, which will save them the Charges of pleading the late King's pardon against an Informer, and standing Tryal upon the Judgment of the Judges) some certain Sum to be imposed by the Parliament as a Tax, and not as a Fine upon them; as for Instance, All persons who had places of profit, or were active busie Men for the Times 50 *l.* which at 2000 persons, will amount to 100 Thousand *l.*

That all other persons who behaved themselves well under this Revolution, disarming Papists, &c. or have voluntarily and freely taken the Oaths to the present Government the very next Term after the Coronation, or are persons of Inferior Degree and Stations, do pay 10 *l.* The Number of these will be found to be very great throughout *England* and *Wales* in the two last Reigns, by Neglect, and otherwise, at least 10000 Men, which will amount to 100 Thousand *l.* These Sums will be certainly paid without any Discontent, the Act of Oblivion being a good Consideration for it.

V. Because the Reason why these persons are more particularly aimed at, is, for that they are suppos'd to be Men that would have comply'd for taking off the Test and Penal Laws, therefore we cannot with any Justice but take Notice of such who did actually Subscribe their Names to Addresses and Papers for abolishing the same: And the rather, for that they may be Impeached in Parliament, and so have as much Need for an Act of Oblivion as any other persons whatsoever.

That all persons therefore who set their Names to Addresses for taking off the Test and Penal Laws, or for returning Thanks to his late Majesty for his Toleration contrary to Law, do pay for their Heads, and for an Act of Oblivion, some certain Sum to be Imposed by Parliament; As for Instance, The Managers, Solicitors, and chief presenters of such Addresses 50 *l.* which, at no more than 500 Addresses, and Four Ringleaders to each Address, will amount to 100 Thousand *l.* That all others pay 10 *l.* which, at 20 to each Address one with another, will amount to 100 Thousand *l.* more.

That all persons who Subscribed to the Three Questions, do pay 40 *l.* by reason of their Quality and Estates, which, at no more than 2000 persons, will amount to 80 Thousand *l.*

The Sum Total is—700 Thousand *l.*

BUT in Case the Parliament should be of Opinion, that this manner of proceeding would also look too much like a Bill of Attainder, we may reduce these several particulars into two Heads.

I. Upon those who shall refuse a passive TEST, as aforesaid.

II: Upon all persons who shall receive any Benefit by a General Act of Oblivion, viz. That a Clause be brought in, and added to the Bill, That all persons (except Members of Parliament, whose Character exempts them from all Exceptions) who intend to have any Benefit by the Act of Indemnity, shall, within such a certain time to be prefix'd, actually pay into the Exchequer, or to Commissioners to be appointed in every respective County, some certain Sum, according to the several degrees of persons; or, in default thereof, to stand Excepted out of the said Act.

There is no doubt but all these, and many other persons, that it may not be our Interest to disoblige at this time by a Bill of Attainder, or putting Marks or Distinctions upon them, to render them Infamous in their Country, and which must, of Necessity, stir up a Spirit of Opposition upon all Occasions, would yet voluntarily and freely lay down a small Sum of Money to secure themselves and their posterity from any future Troubles after so great a Revolution, to purchase peace and quietness, and a firm confirmation of their Lives and Estates by Act of Parliament.

The Parliament is not bound to distribute their Favours *Gratis*, without some small Acknowledgment and Return towards the carrying on the War against *France*, the Common Enemy of Christendom.

And the people would very joyfully accept of the same upon these Terms, to the raising of a very considerable Tax as much beyond the Proposal above set forth, as the Number of persons under the long Catalogue of Offences in the two last Reigns, is above the Number of the persons mentioned in this paper.

Reasons for Raising Money by way of a Tax, and not by way of a Bill of Attainder.

Nolumus Leges Anglia mutari, the Law and Custom of Parliament is *Lex Terra*, and the Supreme Law of the Land; it regulates and corrects the Abuses of all other Courts, and the Equity of their Proceedings is for Example to all Inferior Jurisdictions, Ergo Nolumus Leges, & Consuetudines Parliamenti mutari.

'Tis true, the Jurisdiction of the High Court of Parliament is absolute and unlimited, the King, Lords and Commons are in themselves uncontrollable by any power upon Earth. But in imitation of the great Creator and Governor of the whole World, they have been pleas'd to set such Rules and Bounds to their own proceedings, as they in their great Wisdom have thought just and convenient, and most consistent with the common safety of the people. Hence it is, that we find the Parliament in all Ages very cautious of introducing new Presidents in the ways and methods of Raising of Money. Hence it is, that we may observe how very careful our wise Predecessors have been, in passing any Bill of Attainder; and whenever we

we meet with such an extraordinary Bill, we shall generally find that the same was passed in a Case of Necessity, and upon some eminent and particular person, who had been instrumental in some high station, towards the Subversion of the Government, and whose interest and power was above the Authority of the ordinary Courts of Justice, as against my Lord *Strafford*, and the Duke of *Monmouth*, and such like persons; and yet in the former, the Parliament was so very cautious, as to Enact, *That the same should never be made use of for a president for the future.*

But in all Ages and Histories we can never read an Instance of an Act of Parliament to attain a number of Men of Inferior Station, and subject to the ordinary Methods and Rules of Law, the Reason of which is very plain, for that such Presidents are of dangerous Consequence, and not consistent with the common Safety of the people of *England*; *Salus populi, Suprema Lex.* The end of all Government consists in a general Security of the Lives, Liberties, and properties of the Subject: And in every Government, where the Laws and Methods of the Supreme Courts are most strict and regular for the common Safety, those Laws and Methods are esteem'd as the best, and that Nation as the most happy in the World. God be praised, this Kingdom doth enjoy the happiness of the best Constitution in the World, which we ought to value the more, because so lately retriev'd, by the wonderful hand of providence, from imminent Destruction. But, amongst other Laws and Methods observ'd in this Nation, the people of *England* have always valued this, That in all the various Revolutions of the Government, the general pardon of one prince (tho' but King *de Facto*, and not *de Jure*) hath ever been observ'd in the next Revolution; for otherwise no Man living could be safe, but that one time or other he might be executed for a Traytor, or his Estate forfeited, and his Blood corrupted by a Bill of *Attainder*.

'Tis true, we have seen a pardon disputed in parliament against an Impeachment of the House of Commons, and in the Case of a prime Minister of State; but the Law of *England* is grounded upon Reason, which in such a Case is singular, and in a manner *Lex Necessitatis*; for such persons are supposed to command the Broad Seal, and to be able to obtain a pardon when they please. And whereas it is a Maxim of Law, *That the King can do no Wrong*; the same do's imply, That his Ministers may do wrong, and may be punish'd for it; but that might not be, in case a pardon should be valid in such a Case against the Impeachment of the Commons of *England*: The King might do wrong, if his Ministers might do it by his assurance of such a pardon; so that the common safety of the people, which is the Supreme Law that governs all the rest, do's require that such a pardon in such particular Instances should not be of any Force in Law; And this will be the Case of the late Lord Chancellor, some of the Judges, and other evil Ministers of State.

But *Cessante ratione Legis Cessat Lex*, where providence has thrown a pardon upon a Number of Men subject to the ordinary Courts of Justice, and the same is allowed every Term in the Courts of *Westminster Hall*, and all other Courts within this Kingdom, when Felons, and other Notorious Offenders have been discharged upon it, then it is very extraordinary to see the same at length defeated, and a Bill of *Attainder* executed upon several thousand Families.

How can such a president as this consist with the common safety of the people? For if one Legal pardon may be set aside, why not another? The general pardon of a prince, is as Legal as any other pardon by Act of parliament, so far as it can by Law extend; And if it should once become practicable to pass Bills of *Attainder*, notwithstanding any Legal pardon to the contrary, Who can be safe? What can be expected, but that in every Revolution the succeeding Parliament should pass a Bill of *Attainder* upon the former, notwithstanding any General pardon, or Act of Oblivion to the contrary, and then what Fatal Consequences will such a president produce? Where will be the End of Ruin and Desolation? This would be to put a new Weapon into Mens hands, to destroy one another to all Eternity.

Consider the various Revolutions during the Wars between the Two Houses of *York* and *Lancaster*; if the General pardons on both Sides had been set aside, no Man in the whole Kingdom had been secure.

As the General Law of Nations ought to be observed by all Princes and Assemblies, tho' in open War one with another, so these General pardons for the common Safety of the people ought to be observ'd in all Revolutions of Government.

Object. *That these Arguments tend to the setting aside of the Bill of Forfeitures, and of the Bill of pains and penalties, and therefore are not to be allowed.*

I. As to the Bill of *Forfeitures*, the Answer is, That so far as the same is really and truly a Bill of *Forfeitures*, these Reasons do not tend to the setting aside thereof: But so far as the said Bill may tend to the imposing of penalties upon persons who are not liable to the same by the Common Law, they may; for so far the said Bill is not properly a Bill of *Forfeitures*, but a Bill of *Attainder*, and may be retorted upon us hereafter for not receiving the Sacrament.

II. As to the Bill of *pains and penalties*, these Reasons can no ways be made use of against inflicting pains and penalties upon great Ministers of State, who have acted against their Oaths to the Government, and against the Fundamental Constitution thereof upon the Confidence of a pardon, which they could command whenever they pleas'd, and who were punishable by no other way, but by the power of a parliament. But so far as the said Bill may extend to the punishment of Inferior persons who are under the common Fate of Mankind, to stand and fall by the Laws of this Realm, there such Reasons may be made use of very justly, to raise a due Consideration how far such a president may be consistent with the Rules and Methods of parliament, and the common Safety of the people of *England*.

Object. *That this Bill of Forfeitures will not be any Bill of Attainder, for that the late King's pardon does not extend to the penalties which are due to an Informer, for the King cannot give away another Man's Right;*

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He may remit a Forfeiture due to Himself, but not when it's due to the Subject ; so that wherever the Subject hath a Right, the King cannot, by his pardon, divest the same.

Resp. In all penal Statutes, the Right of the penalty is in *Nubibus*, and not fix'd in any person, till an Action be brought, or an Information fil'd ; and then that person who files the Information, hath a Right in Law to the penalty, and the King cannot, by any pardon, divest the same, or remit that Forfeiture which is by Law appropriated to the use of that particular Informer. But in Case the King grant a pardon before any Action brought, or Information filed, (that is) before the Right be attached in any Subject, in such Case the King takes the first Cognizance of the Matter, and is, in judgment of Law, instead of an Informer, and by Consequence may remit the Forfeiture which is, in such a Case, due to himself alone. And farther also, for that after such pardon, no person can inform *tam pro Domino Rege quam pro seipso*, according to the Statutes, and for himself alone he cannot inform in any popular Action, as is adjudg'd in 3 *Instit.* 194, 195. *Coke* 11. *Report.* Dr. *Foster's Case*, fol. 65, 66. and many other *Reports*. So that the late King's pardon is valid in Law to discharge all persons against whom no Action was brought, nor Information filed before the said pardon.

II. Upon this particular Statute, no Action can be brought till after Conviction by Information, presentment, or Indictment, and the plaintiff in his Declaration must set forth the said Conviction as part of his Title ; But no Man can be Convicted since that pardon, and therefore no penalty can be recover'd by any Informer, as is said before.

III. All those who had particular Dispensations in their Patents may insist, that they had acted according to Law, that is, according to the Judgment of the Judges ; For tho' that Judgment might be ever so corrupt and erroneous, yet the same was a Law that left the people to their liberty, either to take the Oaths, or to let them alone : What is all the Law of *England*, but the Judgment of the Judges reported to us from Age to Age, in our Law Books and Reports ? In the 1 *Instit.* fo. 168. c. my Lord *Coke* tells us, That *Judicium est quasi Juris dictum* so called, because so long as it stands in Force, *pro veritate accipitur*, and cannot be contradicted. The Famous *Plowden*, fo. 82. in the Case of *Partridge* against *Coker*, hath this Expression, Words (says he) which are no other than the Verberation of the Air, do not make a Statute, but only the Image of a Statute, and the Life of the Statute rests in the minds of the Expositors of the words, who are the Members of Parliament who made that Statute : But in Case there be no Parliament, so that their minds cannot be known, then the Judges are by Law the Interpreters of that Statute. The Law itself is but a dead Letter, but the Judges, upon their solemn Oaths, are the speaking Law, and several Cases are there Cited where Constructions have been made contrary to the Letter of the Statute. My Lord *Hobart* in the Case of *Slade* against *Drake* tells us, That as Articles are made de Fide, by the determination of the Church, so matters are said to be de Lege, by the determination of the King's Courts. And fo. 84. his Lordship declares, That the Courts Ecclesiastical cannot interpret a Statute, but only the Judges of the Common Law.

'Tis expressly Enacted, That the King shall not pardon Murder but by express words, and not by the words (*Felonicam Interfectionem*) because the King was frequently misinformed, and by misrepresentations used to pardon Murder ; whereas he intended only to pardon Manslaughter. And yet the King *pro Tempore*, hath always dispensed with that Statute, and Murder has been pardon'd by the words (*Felonicam Interfectionem*) ever since, contrary to the express words of the Statute ; and, as we are credibly informed, such a pardon was read, and allowed in the King's Bench this last Term. Cases of this Nature are innumerable, what words can be more plain and express than the words of those Statutes, That no person shall go Judge of Assize in his own County ; Nor be Sheriff for more than one Year. That no Welshman shall be Judge Chamberlain, &c. in Wales. That there shall not be more than 8 Justices in each County of Wales, and the like. And yet the contrary is done and allow'd even at this day, without any Notice thereof in Parliament ; and what Reason can be given for this, but that all Mankind must confess, That the Judges are the speaking Law ; and that they have declared, That the King has a dispensing power in these Cases, notwithstanding the Statutes say, That the King shall not be able by any Nonobstante to dispense with the same.

And therefore let the Judges answer for the Integrity of the Law in this Case, as well as in the Case of the *Ship Money*, and all other Cases, the Subject is no way accountable by Law for the same. In the Speech of Mr. *Pierpoint* against Judge *Berkley*, upon his Impeachment for High Treason before the Lords, he urges, by way of Aggravation, That for a Judge to be unjust, more hurteth the publick than any other ; For what a Judge doth, is look'd upon as a thing ought to be done, and his unjust Judgments were our Records, (that is) our Laws, *Rushworth's Collections*. The Excellency of our Laws, above the Laws of all other Nations, consists in the Certainty of it, and the Certainty consists in this, That every Judgment of the Judges is a Law till it be Reversed ; so that the people of *England* who act under such a Judgment are safe, without any regard to the Integrity or Corruption of the Judges, of which they are no Judges Paramount : But when that Judgment is Reversed in the *Exchequer*, they have all fair warning that the Law is altered in that particular, and then the 2d Judgment will protect them ; and in Case that Judgment be also Reversed in Parliament, then the first Judgment comes into Force again : So that the people must walk after the Judgment of the Judges in all Cases ; and if they are punished for so doing in Parliament, it must be by a Bill of *Attainder*, contrary to all the former Rules and Methods of proceedings.

So that upon the whole matter, to raise Money by such a Tax as is proposed, seems to be just and equal, and according to the ancient Rules and Methods of Parliament : But to raise Money by the Name of Forfeitures, tho' in reality by a Bill of *Attainder*, is a new President of very great Consequence ; and whether it be consistent with the common Safety of the people in General, or with our own Interest in particular, is humbly submitted to our Superiors, to whose Judgment we must all Appeal.

Let us beware lest we dig a pit for others, and fall into it our selves.